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Federal Communications Commission

FCC 97-288

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DISPATCHED
Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
Price Cap Performance Review)
for Local Exchange Carriers;) CC Docket No. 94-1
Treatment of Video Dialtone Services)
Under Price Cap Regulation)

ORDER

Adopted: August 14, 1997

Released: August 22, 1997

By the Commission:

1. In 1992, the Commission modified its rules to allow a local exchange carrier (LEC) to participate in the video marketplace within its service area, consistent with the then-applicable statutory telephone company-cable television cross-ownership restrictions, by offering video dialtone service.¹ The Commission subsequently decided to apply existing price cap rules to the rates charged for basic video dialtone service provided by a LEC.² In 1995, the Commission created a separate price cap basket for video dialtone service and sought comment on certain implementation issues.³

2. On February 8, 1996, the Telecommunications Act of 1996 (1996 Act) repealed the telephone-cable cross-ownership restriction,⁴ repealed the Commission's video dialtone rules and

¹ *Telephone Company-Cable Television Cross-Ownership Rules*, Second Report and Order, Recommendation to Congress, and Second Further Notice of Proposed Rulemaking, 7 FCC Rcd 5781 (1992), *appeal sub nom.*, Mankato Citizens Telephone Co., No. 92-1404 (D.C. Cir. filed Sept. 9, 1992), *dismissed as moot*. The Commission described video dialtone service as the provision by a local telephone company of a basic common carrier platform to multiple video programmers on a nondiscriminatory basis, with access to any or all video programming by end-user subscribers. *Id.* at 5783, 5787.

² *Telephone Company-Cable Television Cross-Ownership Rules*, Memorandum Opinion and Order on Reconsideration and Third Further Notice of Proposed Rulemaking, 10 FCC Rcd 244 (1994).

³ *Price Cap Performance Review for Local Exchange Carriers; Treatment of Video Dialtone Services Under Price Cap Regulation*, Second Report and Order and Third Further Notice of Proposed Rulemaking, 10 FCC Rcd 11098 (1995).

⁴ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996), § 601(b)(2) (repealing 47 U.S.C. § 221(a)).

policies,⁵ and established the open video system as a new means for entry into the multichannel video programming distribution market.⁶ On March 11, 1996, the Commission terminated the video dialtone rulemaking proceeding in CC Docket No. 87-266, eliminated the video dialtone regulations and policies, and revoked the Common Carrier Bureau's order that had adopted subsidiary accounting and reporting requirements for video dialtone services.⁷ Certain LECs already providing video dialtone service were "grandfathered," with one LEC given until March 1, 1997 to convert to another means of multichannel video distribution.⁸

3. In view of the recent termination of the last authorized provision of video dialtone service, we hereby terminate as moot our consideration in this proceeding of price cap rules for video dialtone service and remove the separate basket for video dialtone services from our price cap rules.⁹ Open video system pricing issues are being addressed in a separate proceeding.¹⁰

4. Accordingly, IT IS ORDERED that the portion of CC Docket No. 94-1 entitled *Treatment of Video Dialtone Services Under Price Cap Regulation*, including the *Third Further Notice of Proposed Rulemaking*, IS TERMINATED.¹¹

⁵ 1996 Act, § 302(b)(3).

⁶ 47 U.S.C. § 573. Section 302 of the 1996 Act provides that common carriers may provide: (1) video programming to subscribers through radio communication under Title III of the Communications Act; (2) transmission of video programming on a common carrier basis under Title II of the Communications Act; (3) video programming as a cable system under Title VI of the Communications Act; or (4) video programming by means of an open video system under new Section 653 of the Communications Act.

⁷ *Implementation of Section 302 of the Telecommunications Act of 1996 (Open Video Systems)*, Report and Order and Notice of Proposed Rulemaking, 11 FCC Rcd 14639 (1996).

⁸ *Bell Atlantic-New Jersey, Inc.*, 11 FCC Rcd 21036 (Cable Serv. Bur. 1996).

⁹ On March 21, 1997, the Common Carrier Bureau's Competitive Pricing Division eliminated LEC reporting of information on the video dialtone price cap basket to support annual revisions in interstate access service tariffs scheduled to become effective July 1, 1997. Material To Be Filed in Support of 1997 Annual Access Tariff Filings, Tariff Review Plans, DA 97-593 (rel. March 21, 1997).

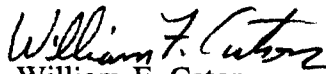
¹⁰ *See Allocation of Costs Associated with Local Exchange Carrier Provision of Video Programming Services*, Notice of Proposed Rulemaking, 11 FCC Rcd 17211 (1996).

¹¹ *See Price Cap Performance Review for Local Exchange Carriers; Treatment of Video Dialtone Services Under Price Cap Regulation*, Second Report and Order and Third Further Notice of Proposed Rulemaking, 10 FCC Rcd 11098 (1995).

5. IT IS FURTHER ORDERED that in light of the 1996 Act's repeal of the Commission's rules and policies concerning video dialtone service, WE FIND FOR GOOD CAUSE that notice and comment on the action taken in this order would be impracticable, unnecessary, and contrary to the public interest.¹² Because the rules being removed in this order no longer serve any purpose, there is no reason to seek public comment on such removal.

6. IT IS FURTHER ORDERED that the Commission's regulations ARE HEREBY AMENDED as set forth in Appendix A.

FEDERAL COMMUNICATIONS COMMISSION


William F. Caton
Acting Secretary

¹² See 5 U.S.C. § 553(b)(B).

APPENDIX A

Part 61 of title 47 of the Code of Federal Regulations is amended as follows:

PART 61 -- TARIFFS

1. The authority citation for Part 61 continues to read as follows:

Authority: Secs. 1, 4(i), 4(j), 201-205, and 403 of the Communications Act of 1934, as amended; 47 U.S.C. §§ 151, 154(i), 154(j), 201-205, and 403, unless otherwise noted.

2. Section 61.42 is amended by removing and reserving paragraph (d)(5).

3. Section 61.45 is amended by removing and reserving paragraph (b)(3) and by revising the introductory text of paragraph (b) to read as follows:

§ 61.45 Adjustments to the PCI for Local Exchange Carriers

* * * * *

(b) Adjustments to local exchange carrier PCIs for the baskets designated in §§ 61.42(d)(2), (3), (4) and (6) shall be made pursuant to the formula set forth in § 61.44(b), and as further explained in §§ 61.44(e), (f), (g), and (h).

* * * * *

4. Section 61.47 is amended by removing and reserving paragraph (g)(6).

5. Section 61.48 is amended by removing and reserving paragraph (j).